IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27..3..2007

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THE HONOURABLE MR. JUSTICE K. CHANDRU

Writ Petition Nos.10958 to 10961 of 2007
and W.P. No.11191 of 2007

W.P.Nos.10958 to 10961 of 2007:

Management
Floram Shoes (India) Pvt. Ltd.
Agarmchery Post
Madhanur Via
Vellore District .. Petitioner in all W.Ps.

Vs.

1. The Presiding Officer,
   Labour Court, Vellore .. 1st Respondent in all WPs
2. R.Robert .. R2 in W.P.No.10958 of 2007
3. J.Padmavathi .. R2 in W.P.No.10959 of 2007
4. M.Kumar .. R2 in W.P.No.10960 of 2007
5. T.Franchanna .. R2 in W.P.No.10961 of 2007

Petitions filed under Article 226 of the Constitution of India seeking for issuance of writ of mandamus forbearing the first respondent Labour Court at Vellore from proceeding with I.D. Nos.164, 166, 167 and 165 of 2005 on the file of the first respondent.

W.P.No.11191 of 2007:

Management
Floram Shoes (India) Pvt. Ltd.
Agarmchery Post
Madhanur Via
Vellore District .. Petitioner in WP.11191/07

Vs.

1. The Presiding Officer,
   Labour Court
   Vellore
2. R.Robert

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3. T.Franchanna
4. J.Padmavathi
5. M.Kumar .. Petitioner in WP.11191/07

Petition filed under Article 226 of the Constitution of India seeking for issuance of writ of Certiorari calling for the records relating to common order dated 31.01.2007 in I.A. Nos.365 to 368 of 2005 in I.D. Nos.164 to 167 of 2005 on the file of the first respondent.

For Petitioner : Mr.Sanjay Mohan
for M/s S.Ramasubramanian

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C O M M O N O R D E R

In all these writ petitions, the petitioner is a shoe manufacturer [hereinafter referred to as 'the Management']. In W.P.No.11191 of 2007, the respondents 2 to 4 are the workmen and insofar as the other writ petitions, the second respondent in each of the writ petitions, is the workman. In W.P.No.11191 of 2007, the petitioner challenges the preliminary order dated 31.01.2007 made by the first respondent Labour Court in I.A. Nos.365 to 368 of 2005 made in I.D. Nos.164 to 167 of 2005 dismissing the objections raised by the Management and held that the dispute raised by the contesting respondents / workmen cannot be rejected at the outset and the main I.Ds. were posted for trial.

2. In W.P. No.10958 to 10961 of 2007, the prayer is for a direction to the first respondent Labour Court to forbear from proceeding with the I.D. Nos.164 to 167 of 2005. With reference to the preliminary issue challenged in W.P.No.11191 of 2007, it must be stated that the Court cannot interdict a preliminary order of the Labour Court.

3. In a writ petition under Article 226 of the Constitution of India, at the threshold, the High Courts have been warned not to delay the proceedings and the Management could very well agitate the issue along with the main Award, if they are so advised. It is, in this context, relevant to extract the following passage found in paragraph 22 of the judgment of the Supreme Court in its decision reported in 1975 (2) SCC 661 [The Cooper Engineering Limited v. Shri P.P.Mundhe]

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Para 22: "We are, therefore, clearly of opinion that when a case of dismissal or discharge of an employee is referred for industrial adjudication the labour court should first decide as a preliminary issue whether the domestic enquiry has violated the principles of natural justice. When there is no domestic enquiry or defective enquiry is admitted by the employer, there will be no difficulty. But when the matter is in controversy between the parties that question must be decided as a preliminary issue. On that decision being pronounced it will be for the management to decide whether it will adduce any evidence before the labour court. If it chooses not to adduce any evidence, it will not be thereafter permissible in any proceeding to raise the issue. We should also make it clear that there will be no justification for any party to stall the final adjudication of the dispute by the labour court by questioning its decision with regard to the preliminary issue when the matter, if worthy, can be agitated even after the final award. It will be also legitimate for the High Court to refuse to intervene at this stage. We are making these observations in our anxiety that there is no undue delay in industrial adjudication."

Therefore, the writ petitions deserve to be dismissed without going into the merits of the case.

4. However, Mr.Sanjay Mohan, learned counsel appearing for the petitioner Management contended that the preliminary issue dealt with in The Cooper Engineering case (Cited supra) was with reference to the exercise of power under Section 11A of the Industrial Disputes Act [for short, 'I.D. Act'] where the validity of the enquiry was directed to be decided. But in the present cases, the very jurisdiction of the Labour Court to go into the issue has been questioned and, therefore, the application of Cooper Engineering case may not be appropriate. The learned counsel for the petitioner relied upon the following judgments and submitted that the writ petitions under Article 226 of the Constitution of India can be available even at this stage.

5. In The Management of Binny Ltd. (B&C Mills) v. The Government of Tamil Nadu and others [1989 (1) LLJ 180], the question was dealt with before the introduction of Section 2(a)

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(2) of the I.D. Act by the Tamil Nadu Amendment Act 5 of 1988 and the following passage found in paragraph 11 will make the position clear.

Para 11: "The position before the introduction of Section 2A of the Act was that a dispute between an employer and an individual workman could not per se be an industrial dispute. But, it could become one if it was taken up by a union or a number of workmen making a common cause with the aggrieved individual workman. The Section was introduced in order to make the machinery under the act available to cases in which individual workmen were discharged, dismissed, retrenched or whose services were otherwise terminated. While introducing the Section, the legislature thought fit to bring in a fiction as referred to above. By virtue of the said fiction, the question of formation of opinion by the Government under Section 10(1) of the Act that an industrial dispute exists or is apprehended, cannot arise in cases falling under Section 2A of the Act. However, the language of Section 10(1) of the Act continues to be unaltered even after the introduction of Section 2A of the Act. Nor the provisions of Section 12(5) of the Act have been interfered with. A reading of Section 10(1) and Section 12(5) of the Act makes it clear that the appropriate Government has a discretion to decide whether a reference should be made or not even in cases where an industrial dispute exists or is apprehended."

6. In National Engineering Industries Ltd. V State of Rajasthan and others [2000 (1) SCC 371], it must be stated that the Court dealt with the jurisdictional issue on the basis of reference made to the Labour Court and, therefore, the Court had an occasion to consider the validity of the reference and the materials that had backed the reference was scrutinised. It is relevant to extract the following passage found in paragraphs 25 and 28 of the judgment:

Para 25: "It will be thus seen that High Court has jurisdiction to entertain a writ petition when there is allegation that there is no industrial dispute and none apprehended which could be subject matter of reference for adjudication to the Industrial Tribunal under Section 10 of the Act. Here it is a question of jurisdiction of the

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Industrial Tribunal, which could be examined by the High Court in its writ jurisdiction. It is the existence of the industrial tribunal which would clothe the appropriate Government with power to make the reference and the Industrial Tribunal to adjudicate it. If there is no industrial dispute in existence or apprehended appropriate government lacks power to make any reference."

Para 28: "Industrial Tribunal is the creation statute and it gets jurisdiction on the basis of reference. It cannot go into the question on validity of the reference. Question before the High Court was one of jurisdiction which it failed to consider. A tripartite settlement has been arrived at among the management, Labour Union and the Staff Union. When such a settlement is arrived at it is a package deal. In such a deal some demands may be left out. It is not that demands, which are left out, should be specifically mentioned in the settlement. It is not the contention of Workers' Union that tripartite settlement is in any way mala fide. It has been contended by the Workers' Union that the settlement was not arrived at during the conciliation proceedings under Section 12 of the Act and as such not binding on the members of the Workers' Union. This contention is without any basis as the recitals to the tripartite settlement clearly show that the settlement was arrived at during the conciliation proceedings."

Therefore, it could be seen that that question does not arise in the present case.

7. In Premier Mills Ltd., rep. by Deputy General Manager, Hosur Taluk, Dharmapuri v. State of Tamil Nadu and others [2003 (1) LLJ 993], this Court has considered the order made by the State Government in terms of Section 10(b) of the I.D. Act, which was challenged by the Mill owners. Therefore, as it had involved financial liability on the Management, the issue was gone into by this Court, which is not in the present case. It is relevant to extract the following passage found in paragraph 45 of the judgment.

Para 45: "The ratio of this decision cannot be made applicable in the present circumstances. By merely making reference, no financial burden was involved, whereas by making a direction regarding interim relief, some financial liability has been

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fastened on the employer / establishment and by virtue of Section 29A of the Industrial Disputes as amended in Tamil Nadu, failure to comply with such a direction is punishable. Therefore, even though question of financial capability is of no consequence, at the time of making the reference, financial capability has got some bearing in the matter relating to direction under Section 10B of the Act."

8. In Jaihind Roadways v. Maharashtra Rajya Mathadi Transport and General Kamgar Union and others [2005 (8) SCC 51], the Supreme Court merely followed the National Engineering Case (cited supra).

9. A Division Bench of the Bombay High Court in its decision reported in Walchandnagar Industrial Limited (Engineering and Foundary Division) v. Dattusingh Lalsing Pardeshi and others [2006 (II) LLJ 834], reiterated the jurisdiction of the Industrial Court in paragraph 69 of its judgment, to adjudicate upon the entire issue and it does not help the case of the petitioner.

10. In ANZ Grindlays Bank Ltd. (now known as Standard Chartered Grindlays Bank Ltd.) v. Union of India and others [2005 (12) SCC 7 38], the Supreme Court in paragraph 13, observed as follows:

Para 13: "According to learned counsel the writ petition is pre-mature as the appellant has got a remedy before the Tribunal to show that the reference is either bad in law or is uncalled for. We are unable to accept the submission made. It is true that normally a writ petition under Article 226 of the Constitution should not be entertained against an order of the appropriate Government making a reference under Section 10 of the Act, as the parties would get opportunity to lead evidence before the Labour Court or Industrial Tribunal and to show that the claim made is either unfounded or there was no occasion for making a reference. However, this is not a case where the infirmity in the reference can be shown only after evidence has been adduced. In the present case the futility of the reference made by the Central Government can be demonstrated from a bare reading of the terms of the reference and the admitted facts. In such circumstances, the validity of the reference made by the Central Government can be examined in proceedings under Article 226 of the Constitution

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as no evidence is required to be considered for examining the issue raised."

Once again, the National Engineering Case (cited supra) was followed but they are all cases relating to reference order being made by the appropriate Government under Section 10(1).

11. Before proceeding to deal with the rival contentions, it is necessary to trace the history of Section 2-A of the I.D.Act. Section 2-A of the I.D.Act was introduced by the Parliament by the amendment made by Act 35 of 1965. Section 2-A reads as follows:

"2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute - Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute."

12. Before the introduction of Section 2-A, an individual worker has to rely upon the support of the Trade union and other fellow workers to have his non-employment adjudicated by the Court. After the introduction, an individual dispute can be raised by a worker without other workers supporting his case or not. Therefore, an exception has been carved out from the definition of industrial dispute given under Section 2(k) of the I.D.Act. Even after the introduction of Section 2-A still one were made to go through the process of conciliation. Reference has to be made for adjudication by the appropriate Government under Section 10(1) of the I.D.Act.

13. As it imposed a cumbersome procedure, the Tamil Nadu State Legislature has amended Section 2-A and added sub- section (2), by the T.N.Act 5 of 1988 with effect from 1.11.1988. The Section 2-A(2), which is applicable to the State of Tamil Nadu, reads as follows:

"(2) Where no settlement is arrived at in the course of any conciliation proceeding taken under this Act in regard to an industrial dispute referred to in sub-section (1), the aggrieved individual workman may apply, in the prescribed manner, to the Labour Court for adjudication of such dispute and the Labour Court shall proceed to adjudicate such dispute, as if, such dispute has

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been referred to it for adjudication and accordingly all the provisions of this Act relating to a adjudication of industrial disputes by the Labour Court shall apply to such adjudication."

(Emphasis added)

14. Therefore, an industrial dispute with reference to the individual non-employment has undergone radical departure from the traditional concept of industrial dispute. Now in any case of non-employment can be raised without the support of the Union and without there being any reference by the appropriate Government. A worker can move the Labour Court/Tribunal as a matter of right. More or less the Labour Courts have now been vested with an original jurisdiction without any technicalities attached to the same. This power of Labour Court to deal with an individual dispute arose from the fulfilment of an obligation imposed by the international convenants and pursuant to the resolution made by the International Labour Organisation (ILO) vide its resolution No.119 (1963) by which member countries have agreed to create a mechanism by which in case of dismissal, discharge or termination of workmen must have an approval by a third party neutral arbitrator.

15. In the light of the development of law, today, an industrial worker in case of non-employment can move the Labour Court without there being any obstacle in law. Once such a petition is filed and the Labour Court issues notice, it is incumbent upon the management to enter appearance and put-forth their stand in defence. Even if it goes to the root of the matter, it is necessarily for the industrial adjudicator such as the Labour Court to deal with it and the Labour Court will have to pass an Award in terms of the contentions of parties.

16. The Preamble to the Industrial Disputes Act makes it clear that it has only two methods of resolving a dispute – one by conciliation and the other by adjudication. Therefore, when the conciliation having failed, the only other method by which an industrial dispute can be resolved is by adjudication and the present attempt by the management even to thwart such a process of adjudication can never be entertained by the Courts.

17. Therefore, the question will not be determined in the light of the legal position provided in this case and the decisions cited by the Management have no relevance to the facts of the present cases. Even though the Management wanted to contend that there was a settlement in favour of the workmen, and therefore, the dispute cannot be raised validly by new workmen, it must be stated that the Supreme Court in Oswal Agro Ltd. and another v. Oswal Agro Furane Workers Union and others

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[L.L.R. 2005 305 SC] held that the settlement under the I.D. Act will become invalid when a claim made seeking protection under Section 25(O) of the I.D. Act.

> "Settlement was arrived at between the employer and its workmen in terms of Section 12(3) of the Act-High Court held that as the management had not applied for prior permission to close down the Industrial undertaking, notice under Sec.25-O was illegal Appeal whether in a case of closure of an industrial undertaking, prior permission of the appropriate Government is imperative - Yes - A settlement arrived at by and between the employer and the workmen would not prevail over the statutory requirement as contained in Sec.25N and Section 25-O of the Act."

18. Therefore, the attempt of the Management to seek for interference of this Court at this stage to thwart further proceedings before the Labour Court is clearly unwarranted. The claim made in W.P.Nos.10958 to 10961 of 2007 even without full adjudication cannot be permitted. Therefore, all the writ petitions fail and they are dismissed with cost of Rs.1000/- (Rupees one thousand only) to be paid to the contesting workman in each of the petitions. Connected Miscellaneous Petition No.1 of 2007 is all the writ petitions stand closed.

gri

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

The Presiding Officer,
Labour Court,
Vellore

+ 5 ccs to M/s. Ramasubramaniam Associates, Advocate SR No. 19181, 19183

VRK(CO)
SR/20.9.2007

WP.Nos.10958 - 10961 /2007
& W.P.No.11191 of 2007

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